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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,405	07/14/2003	Paul V. Cooper	23438.00040	7654

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EXAMINER

KASTLER, SCOTT R

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

05/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,405

Applicant(s)

COOPER, PAUL V.

Examiner

Scott Kastler

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Double Patenting

Applicant is advised that should claim 14 be found allowable, claims 15 and 16 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The above claims differ only in the intended use of the claimed apparatus (use as a rotor shaft in various devices) and it has been well settled that the manner or method of use of an apparatus cannot be relied upon to fairly further limit claims to the apparatus itself. See MPEP 2114.

Applicant is advised that should claim 18 be found allowable, claim 19 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The above claims differ only in the intended use of the claimed apparatus (use as a gas-transfer conduit in various devices) and it has been well settled that the manner or method of use of an apparatus cannot be relied upon to fairly further limit claims to the apparatus itself. See MPEP 2114.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-19 and 22-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grant et al'723 in view of Morando'796. Grant et al teaches that it was known in the art at the time the invention was made to protect graphite components subject to a molten aluminum environment by cementing a protective sleeve of silicon carbide of uniform thickness around the graphite component with the inclusion of a gasket (the shaft coupler) between the protective coating and the graphite component (see the claims for example) where these components may be posts, rotary shafts and molten metal conduits (risers for example) (see col. 3 lines 37-45 for example) which can be employed in scrap metal melters or rotary degassers as instantly claimed (see figure 9 for example) thereby showing all limiting aspects of the above claims except the provision of openings or grooves for the injection of the cement, since the method of making the claimed protected component cannot serve to distinguish claims to the protected component itself unless applicant can present a showing, in proper form, that the process of making the protected component provides a substantially different final component from the component shown by Grant et al'723. See MPEP 2113. Morando'796 teaches that at the time the invention was made it was a commonly known expedient in the art to employ openings and grooves in order to inject cement into cavities between components to be cemented together (see col. 4 lines 58-67 for example) in order to prevent displacement between the cemented components. Because Grant et al also does not desire displacement between the cemented components, motivation to

employ the grooves and openings disclosed by Morando'796 in order to deliver the cement would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

Claims 1 and 7-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morando'753 in view of Morando'796. Morando'753 teaches a protected graphite component (36) for use in molten metal pumps where the component is covered with a protective sheath (34) and with cement (44) between the sheath and component (36) showing all aspects of the above claims except the use of openings or grooves to deliver the cement since the method of making the claimed protected component cannot serve to distinguish claims to the protected component itself unless applicant can present a showing, in proper form, that the process of making the protected component provides a substantially different final component from the component shown by Morando'753. See MPEP 2113. Morando'796 teaches that at the time the invention was made it was a commonly known expedient in the art to employ openings and grooves in order to inject cement into cavities between components to be cemented together (see col. 4 lines 58-67 for example). In order to prevent displacement between the cemented components. Because Morando'753 also does not desire displacement between the cemented components, motivation to employ the grooves and openings disclosed by Morando'796 in order to deliver the cement would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure in view of either of Grant et al'723 or Morando'753 in view of

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Morando'796, the admitted prior art of the instant disclosure at paragraphs [0003]-[0015] for example, teaches devices and components of molten metal processing showing all aspects of the above claims except the use of a protected sheath of ceramic cemented around components of graphite subject to attack by the molten metal. As applied to claim 1 above, both of Grant et al'723 and Morando'753 in view of Morando'796 teach that it was known in the art at the time the invention was made to provide a protective sheath of ceramic cemented around components which would be subject to attack by molten metal. Because any of the graphite components disclosed in the devices taught by the admitted prior art of the instant disclosure would also desire the improved resistance to attack by molten metal, motivation to protect any or all of the components of the devices described by the admitted prior art of the instant disclosure in the manner recited by either of Grant et al'723 or Morando'753 in view of Morando'796 would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

Response to Arguments

Applicant's arguments filed on 3/10/2008 have been fully considered but they are not persuasive. Applicant's argument that neither Grant or Morando'753 teach the use of holes or passages for the insertion of a cement between components is not persuasive because as stated in the above rejections, the rejections are based upon a combination of references, where Morando'796 is relied upon to teach this feature.

Applicant's further argument that neither Grant or Morando'753 would employ the openings of Morando'796 because gaps formed by displacement of cement can cause oxidation

and therefore teaches away from the use of cement is not persuasive because again as stated in the above rejections the openings of Morando'796 are designed to eliminate this very problem. Since Morando'796 is specifically designed to alleviate the problem desired to be solved by at least Grant, motivation to employ the solution of Morando'796 in Grant or Morando'753 would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

Applicant's further argument that the holes of Morando'796 are employed in a different manner for cement injection than those instantly claimed is also not persuasive because the instant claims are all apparatus claims and the manner or method of use of an apparatus cannot be relied upon to fairly further distinguish claims to the apparatus itself.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott Kastler/
Primary Examiner, Art Unit 1793

sk